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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 495

D. C. GILLASPIE, INDIVIDUALLY AND AS NEXT FRIEND OF JAMES D. GILLASPIE, A MINOR,

Petitioner,

v.

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS AND BRIEF IN SUPPORT THEREOF.

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Petitioner,

v.

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS AND BRIEF IN SUPPORT THEREOF.

To the Honorable Supreme Court of the United States:

Come now the Petitioners, D. C. Gillaspie, individually, and as next friend and on behalf of the Petitioner, James D. Gillaspie, a minor, and file this their Petition for a Writ of Certiorari to the Supreme Court of Texas, and would respectfully show the Court:

Statement of the Matter Involved

The Petitioner, D. C. Gillaspie, is the father of James D. Gillaspie, a minor. D. C. Gillaspie, for convenience, will be here referred to as the father, and the Petitioner, James D.

Gillaspie, will be referred to as the son. On January 19, 1952, the son was involved in an automobile collision in San Antonio, Texas. The automobile driven by the son collided with two other automobiles. The father was not in the automobile at the time of the collision. As a result of the collision, property damage in excess of $100 was sustained by the other two automobiles. The son was and still is a minor. The automobile driven by the son was owned by the father. Both the father and son were the holders of valid drivers' licenses issued by the State of Texas, but neither the father nor the son was possessed of public liability insurance at the time of the collision. On the occasion of the collision, the son was driving the automobile with his father's implied consent. On such occasion, he was driving the automobile on a personal mission for his own pleasure and was not acting as agent for his father, nor was he engaged in anywise for the benefit of his father (R. 12, 13). On March 14, the Respondent, the Department of Public Safety of the State of Texas, issued notices of suspension to each of the Petitioners (R. 13, 14, 15, 16, 17), requiring each of them to deposit with the Respondent the sum of $2,181.72, or otherwise suffer the penalties set out in said notices of suspension (R. 13). Specifically, the suspension notice to the son sought to suspend his drivers license if he did not make such deposit (R. 14-15). The notice of suspension to the father sought to suspend and required him to surrender all Texas registration certificates and registration plates held by him if he failed to make the required deposit (R. 16-17).

Petitioners duly appealed from such suspension orders to the County Court at Law No. 2 of Bexar County, Texas (R. 1-6), by filing a suit to reverse said suspension orders and the Judge of said Court stayed the enforcement of said suspension orders pending final judgment (R. 6-7). On trial to the Court without a jury, the trial court made his finding of fact (R. 12, 13), as above set out, and further found that

the amount of damages for which the son might be liable, as a result of the collision, was $1190. The judgment of the trial court modified the order of the Respondent directed to the son, by reducing the amount of the required deposit to $1190, and reversed the Respondent's order directed to the father, permanently enjoining the enforcement of said order against the father (R. 10-12), and by his conclusions of law, the trial court found that the father, D. C. Gillaspie, is not responsible for the damages which may have been incurred by his minor son, James D. Gillaspie; and therefore, the order of the Texas Department of Public Safety, directed to him, the said D. C. Gillaspie, is invalid (R. 13). The Respondent Department of Public Safety duly appealed to the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas from that portion of the judgment reversing and enjoining the enforcement of the Respondent's order against the father. By cross-appeal, the son appealed to said Court of Civil Appeals from that portion of the trial court's judgment modifying and, as modified, affirming the order of the Respondent issued against him. The Court of Civil Appeals reversed the judgment of the trial court, insofar as the same held invalid the Respondent's order against the father, and affirmed that portion of the trial court's judgment rendered against the son. The official report of the opinion of the Court of Civil Appeals is reported under the style *Department of Public Safety* v. *Gillaspie,* 254 S.W. 2d 180. Thereafter, Petitioners duly obtained an appellate review of the decision and judgment of the Court of Civil Appeals by the Supreme Court of Texas which, on June 17, 1953, affirmed the judgment of the Court of Civil Appeals (R. 31-41). The official opinion of the Supreme Court of Texas (R. 31-41) is reported under the style *Gillaspie* v. *Department of Public Safety,* in 259 S. W. 2d 177. Petitioner's motion for rehearing was denied and overruled by the Supreme Court

of Texas on July 15, 1953 (R. 42). On August 4, 1953, the Supreme Court of Texas rendered its order staying the enforcement of its judgment against Petitioners to permit them to petition this Honorable Court for a writ of certiorari (R. 43). On October 13, 1953, the Honorable Hugo L. Black, Associate Justice of this Court, extended the time for filing the petition for writ of certiorari in this cause to and including November 23, 1953, and again on November 23rd, 1953, the Honorable Hugo L. Black, Associate Justice of this Court, further extended the time for the filing of the record and petition for a writ of certiorari in this cause to and including December 12th, 1953. This petition and the printed record are filed and docketed herein within the extended time.

Petitioners contended in the trial court, in the Court of Civil Appeals and in the Supreme Court of Texas, that Article 6701h of Vernon's Annotated Civil Statutes of Texas, the Texas Motor Vehicle Safety-Responsibility Law, by authority of which the Respondent issued the suspension orders against Petitioners, denies them due process of law and the equal protection of the law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

Basis of Jurisdiction

The Supreme Court of the United States has jurisdiction of this proceeding under Title 28, Section 1257, paragraph 3, United States Code Annotated.

The statute of the State of Texas, the validity of which is here involved, is Article 6701h of Vernon's Annotated Civil Statutes of Texas, and may be found in the 1953 Cumulative Pocket Part of Volume 19 of Vernon's Annotated Civil Statutes of Texas, on pages 90 to 106, inclusive, of said pocket part. The principal portion of said article 6701h, which is

here directly under attack, is Section 5 of Article III, which provides as follows:

"SEC. 5. SECURITY REQUIRED UNLESS EVIDENCE OF INSURANCE — WHEN SECURITY DETERMINED — SUSPENSION—EXCEPTIONS.

(a) If twenty (20) days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death, or damage to the property of any one (1) person in excess of One Hundred Dollars ($100), the Department does not have on file evidence satisfactory to it that the person who would otherwise be required to file security under Subsection (b) of this Section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the Department shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Department shall, within sixty (60) days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident, and if such operator is a non-resident the privilege of operating a motor vehicle within this State, and if such owner is a non-resident the privilege of the use within this State of any motor vehicle owned by him, *unless such operator or owner or both shall deposit security* in the sum so determined by the Department provided notice of such suspension shall be sent by the Department to such operator and owner not less than ten (10) days prior to the effective date of such suspension and shall state the amount required as security. Where erroneous information is given the Department with respect to the matters set forth in Subdivisions 1, 2 and 3 of Subsection (c) of this

Section, it shall take appropriate action as hereinbefore provided, within sixty (60) days after receipt by it of correct information with respect to said matters.

(c) This Section shall not apply under the conditions stated in Section 6 nor:

1. to such operator or owner if such owner had in effect at the time of such accident a motor vehicle liability policy with respect to the motor vehicle involved in such accident;

2. to such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy with respect to his operation of motor vehicles not owned by him;

3. to such operator or owner if the liability of such operator owner for damages resulting from such accident is, in the judgment of the Department, covered by any other form of liability insurance policy; nor

4. to any person qualifying as a self-insurer under Section 34 of this Act, or to any person operating a motor vehicle for such self-insurer.

No such policy shall be effective under this Section unless issued by an insurance company or surety company authorized to write motor vehicle liability insurance in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy, or the most recent renewal thereof, such policy shall not be effective under this Section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action upon such policy arising out of such accident; providing, however, every such policy is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than Five Thousand Dollars ($5,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit

of not less than Ten Thousand Dollars ($10,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than Five Thousand Dollars ($5,000) because of injury to or destruction of property of others in any one accident."

Other portions of the law pertinent to a proper disposition of the case are Section 2(b) and 2(c) of Article II, Sections 4, 6, 7, 9, and 10 of Article III, and the portions thereof pertinent hereto are set forth in the brief filed in support of this petition.

Questions Presented

First Question

Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid and deprives Petitioners of their property and privileges without due process of law and denies them the equal protection of the law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said Section 5 requires the suspension of the Petitioner James D. Gillaspie's drivers license and requires the suspension and surrender of the Petitioner D. C. Gillaspie's motor vehicle registrations and license plates because James D. Gillaspie, while driving an automobile owned by his father, D. C. Gillaspie, was involved in a collision, without having public liability insurance, and requires such suspension without regard to the liability of either of Petitioners for damages to any person as a result of said collision, and without affording or making provisions for any character of hearing to determine the liability or probable liability of Petitioners for damages.

Second Question

Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as applied to the Petitioner, D. C. Gillaspie, and deprives him of his property and the equal protection of the law in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that, under the undisputed findings of fact of the trial court and under the established law of Texas, the Petitioner, D. C. Gillaspie, is not and cannot be held liable in damages to any person as a result of the collision involved but nevertheless, and in spite of his non-liability to any person in damages, he is deprived of his property under the terms of the law in question.

Third Question

Section 5(b) of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as to both Petitioners, and deprives them of their privileges and property and of the equal protection of the law, in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said Section 5(b) permits the Respondent Department of Public Safety to suspend the drivers license and motor vehicle registrations of Petitioners unless they deposit the amount of security as is fixed by the Department, and yet no standards or criteria are set forth to govern said Department in arriving at the amount of security to be required of Petitioners.

Statement under Questions Presented

The three questions here presented as to the constitutionality of the Texas Motor Vehicle Safety-Responsibility Law were directly raised and presented in the trial court (R. 1-6), in the Court of Civil Appeals and in the Supreme Court (R. 25, 26, 27, 29, 30).

Reasons Relied On for Allowance of the Writ

The Supreme Court of Texas has decided the federal questions involved contrary to the applicable decisions of the Supreme Court of the United States and of the other federal courts. Forty-one of the forty-eight States now have safety responsibility laws. After diligent research the trial court, the Court of Civil Appeals, the Supreme Court of Texas, counsel for Petitioners and the Attorney General of Texas have been unable to find that any case involving the validity of a safety responsibility law has ever been presented to this Honorable Court for decision. We find no denial of certiorari in any of the reported cases from any of the States having safety responsibility laws, nor do we find any opinion of this Honorable Court directly passing upon the constitutionality of any such law. The questions here presented are of the utmost importance to all of the citizens of the State of Texas and to all citizens of the numerous other states having safety responsibility laws containing provisions in common with the safety responsibility law under attack in this case. The Supreme Court of Texas, in its opinion in the case at bar, has held that the use of the public highways of the State of Texas is a privilege and not a property right, but the questions here presented cannot be brushed aside with such disdain. Without conceding the point, it may be that the personal right to drive an automobile is a mere privilege; but can it be said that the complete denial to a citizen of the use of his automobile, even though driven by a driver of unquestioned competence, so as to effectively remove said automobile from the public highways, constitutes the denial of a mere privilege and not property in the constitutional sense? The Supreme Court of Texas has sustained the law involved on the theory that since the use of the public highways is, in its opinion, a mere privilege, that the deprivation of such privilege

may be accomplished without due process of law. It is felt that this Honorable Court should settle the question that an automobile is a lawful product of commerce, that the use of an automobile on the public highways by a licensed and competent driver, for the benefit of the owner of the automobile, is property in the constitutional sense, and that an owner of an automobile may not have the same removed from the highways and its use denied to him except by due course of the law of the land.

WHEREFORE, the Petitioners, D. C. Gillaspie and James D. Gillaspie, a minor, by his next friend, D. C. Gillaspie, pray that a writ of certiorari be granted herein, directed to the Supreme Court of Texas, and that on hearing hereof the judgment of the Supreme Court of Texas be reversed, and that all other proceedings be had herein as provided by law.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 495

D. C. GILLASPIE, INDIVIDUALLY AND AS NEXT FRIEND OF JAMES D. GILLASPIE, A MINOR,

Petitioner,

vs.

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS,

Respondent

BRIEF IN SUPPORT OF PETITION

To the Honorable Supreme Court of the United States:

Come now the Petitioners, D. C. Gillaspie, and James D. Gillaspie, a minor, by and through his next friend, D. C. Gillaspie, and complaining of the Respondent, the Department of Public Safety of the State of Texas, and respectfully file and submit this their brief in support of their Petition for a Writ of Certiorari filed herein as follows:

Reference to Official Reports of Opinions Delivered in the Courts Below

The opinion of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas is reported in 254 S. W.

2d 180. The opinion of the Supreme Court of Texas, the appellate court of last resort in civil cases in the State of Texas, and to which Court the Writ of Certiorari is sought to be directed, is reported in 259 S. W. 2d 177.

Statement of Jurisdiction

The Supreme Court of the United States has jurisdiction of this proceeding under Title 28, Section 1257, paragraph (3), United States Code Annotated.

Statement of the Case

Article 6701h of the Revised Civil Statutes of Texas, known as the Texas Motor Vehicle Safety-Responsibility Act, was enacted by the 52nd Legislature of Texas, and became effective on January 1, 1952. On January 18, 1952, the Petitioner, James D. Gillaspie, a minor, was driving an automobile in San Antonio, Texas, and became involved in a collision with two other automobiles. He was alone in the car at the time of the collision. The automobile belonged to his father, the Petitioner, D. C. Gillaspie (R. 12-13). On March 19, 1952, both Petitioners received through the mail written notices issued to them by the Respondent, the Department of Public Safety of Texas, advising each of Petitioners that unless they deposited the sum of $2,181.72 with the Respondent within a specified time, that the driver's license of the son would be suspended, and that all automobile registrations of the father would be suspended and he would be required to surrender all license plates on his automobiles (R. 13). Said notices of suspension stated that they were issued under the terms of the Texas Motor Vehicle Safety-Responsibility Act (R. 14, 15, 16, 17). Not having public liability insurance and declining to make the required deposit, Petitioners instituted this suit in the nature of an appeal from said orders of the Respondent in

the County Court at Law No. 2 of Bexar County, Texas, attacking the validity of the law and seeking to enjoin its enforcement against them (R. 1-6). Upon the filing of the suit the trial judge entered an order staying the enforcement of the orders of the Respondent during the pendency of the suit (R. 6-7). On trial to the court, without a jury, judgment was rendered reversing the order of the Department as to the father, enjoining its enforcement against him, reducing the amount of security required to be deposited by the son and, as so reduced, affirming the Department's order against him (R. 10-12). The Department of Public Safety duly appealed to the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, at San Antonio, as to that portion of the judgment rendered in favor of the father and, by cross-appeal, the son assigned error in the Court of Civil Appeals to that portion of the judgment rendered against him. The Court of Civil Appeals sustained the validity of the law as against Petitioners' contention that the law violated the Fifth and Fourteenth Amendments to the Federal Constitution, reversed the judgment of the trial court and reinstated the Department's order issued against the father and sustained the judgment of the trial court which, with modification, affirmed the Department's order against the son (R. 17-23). Both Petitioners, by writ of error, obtained a review of the judgment of the Court of Civil Appeals by the Supreme Court of Texas, again urging the constitutional questions presented to the Court of Civil Appeals (R. 25, 26, 27, 29, 30). On June 17, 1953, the Supreme Court of Texas, the appellate court of last resort in Texas, sustained the validity of the law in question and affirmed the judgment of the Court of Civil Appeals (R. 31-42). The Supreme Court of Texas duly stayed the enforcement of judgment against Petitioners to permit them to petition this Honor-

able Court for a writ of certiorari (R. 43), and in due time and form the petition for a writ of certiorari, this brief, and the record have been duly docketed in this Court.

Assignments of Error

First Assignment of Error

The Supreme Court of Texas erred in sustaining the validity of the orders of the Respondent issued against Petitioners in that Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid and deprives Petitioners of their property and privileges without due process of law and denies them the equal protection of the law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said Section 5 requires the suspension of the Petitioner James D. Gillaspie's drivers license and requires the suspension and surrender of the Petitioner D. C. Gillaspie's motor vehicle registrations and license plates because James D. Gillaspie, while driving an automobile owned by his father, D. C. Gillaspie, was involved in a collision, without having public liability insurance, and requires such suspension without regard to the liability of either of Petitioners for damages to any person as a result of said collision, and without affording or making provisions for any character of hearing to determine the liability or probable liability of Petitioners for damages.

Second Assignment of Error

The Supreme Court of Texas erred in sustaining the validity of the order of the Respondent issued against Petitioner, D. C. Gillaspie, in that Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as applied to the Petitioner D. C. Gillaspie, and deprives him of his property and the equal protection of the

law in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that, under the undisputed findings of fact of the trial court and under the established law of Texas, the Petitioner, D. C. Gillaspie, is not and cannot be held liable in damages to any person as a result of the collision involved but nevertheless, and in spite of his non-liability to any person in damages, he is deprived of his property under the terms of the law in question.

Third Assignment of Error

The Supreme Court of Texas erred in sustaining the validity of the orders of the Respondent issued against Petitioners in that Section 5(b) of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as to both Petitioners, and deprives them of their privileges and property and of the equal protection of the law, in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said Section 5(b) permits the Respondent Department of Public Safety to suspend the drivers license and motor vehicle registrations of Petitioners unless they deposit the amount of security as is fixed by the Department, and yet no standards or criteria are set forth to govern said Department in arriving at the amount of security to be required of Petitioners.

First Assignment of Error

(Restated)

The Supreme Court of Texas erred in sustaining the validity of the orders of the Respondent issued against Petitioners in that Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid and deprives Petitioners of their property and privileges without due process of law and denies them the equal protection

of the law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said Section 5 requires the suspension of the Petitioner James D. Gillaspie's drivers license and requires the suspension and surrender of the Petitioner D. C. Gillaspie's motor vehicle registrations and license plates because James D. Gillaspie, while driving an automobile owned by his father, D. C. Gillaspie, was involved in a collision, without having public liability insurance, and requires such suspension without regard to the liability of either of Petitioners for damages to any person as a result of said collision, and without affording or making provisions for any character of hearing to determine the liability or probable liability of Petitioners for damages.

Statement and Argument under First Assignment of Error

D. C. Gillaspie, one of the plaintiffs below, will be referred to as "the father" for the sake of brevity. The Petitioner, James D. Gillaspie, a minor, will be referred to as "the son". The Department of Public Safety is hereafter referred to as the "Department".

Section of Article III of the Act, Article 6701h, provides that if, within twenty days after the receipt of a report of a motor vehicle accident which has resulted in bodily injury or death, or damage to the property of anyone in excess of $100, the Department does not receive satisfactory evidence from the persons involved that they have been released from liability, or that they have been finally adjudicated not to be liable, the Department shall determine the amount of security which shall be sufficient in its judgment to satisfy all judgments for damages *"as may be recovered against each operator or owner"*. It further provides that if, within sixty days after such report of a motor vehicle accident, the owner or operator has not deposited security

in the sum so determined, *"the Department shall . . . suspend license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident"*.

The Act makes it the mandatory duty of the Department to suspend the operator's licenses of each operator, and registrations of each owner, without determining or inquiring into the liability of such operator owner for damages to any person as a result of the accident, unless the security determined by the Department is deposited with it. It is fundamental under all Federal and State constitutions that laws enacted under the police power, and which have the effect of interfering with a citizen in the exercise of his privileges and use of his property, must not be unreasonable or oppressive. The State may not take privately owned property away from a citizen, however, unless the taking is authorized under some recognized authority incident to the police power, nor then except by due process of law. Section 30 of Article V of the Act provides that if an owner's registration has been suspended under the Act, such registration shall not be transferred nor the motor vehicle in respect of which such registration was issued registered in any other name. Article 1434 of the Penal Code of Texas provides that no person shall sell or transfer a motor vehicle unless the same is duly registered, and requires that whoever shall sell or transfer a motor vehicle shall deliver to the transferee the license receipt issued by the Department for registration thereof for the current year. Article 1435 of the Penal Code further inhibits the transfer of an automobile without the filing of the license receipt and registration. Under the Act involved these license receipts and registrations are required to be suspended by the Department unless security is deposited in compliance with the Department's determination of the amount thereof, and without regard to the liability of the

owner for damages to anyone as a result of the accident. When such suspension is made effective by the Department, the owner cannot sell nor mortgage his automobile while the suspension is in effect. The denial to an owner of the right to sell or encumber his automobile certainly constitutes a taking of that property. *Bielecki* v. *City of Port Arthur* (Comm. App.), 12 S. W. (2) 976; *City of Wink* v. *Griffith Amusement* (Sup. Ct.), 100 S. W. (2) 695; *Spamm* v. *City of Dallas* (Sup. Ct.), 235 S. W. 513; *Crossman* v. *City of Galveston* (Sup. Ct.), 247 S. W. 810. The query then is, may a citizen be deprived of the privilege of operating his automobile or deprived of the right to sell or encumber the same without regard to whether he may be liable in damages to any person resulting from an accident in which the automobile was involved? Under the Act a motorist may be driving his automobile in a careful and lawful manner, and at a lawful rate of speed, and he might be hit from behind by a drunken driver driving ninety miles an hour. The careful driver in such case would not be liable in damages to the drunken driver for damages under the established law of this state, and yet, under the Act involved his privilege of driving and his property could be taken without regard to the facts in the case establishing liability or non-liability to the drunken driver. Does the Act afford due process of law as is guaranteed by the Fifth and Fourteenth Amendments to the Constitution and Section 19 of Article 1 of our state Constitution? We say, "No". Due process of law refers to the general law, which hears before it condemns, proceeds upon inquiry, and only renders judgment after trial. *Armstrong* v. *Taylor*, 87 Tex. 598, 30 S. W. 440; *State* v. *Humble Oil & Refining Co.*, 263 S. W. 319.

The Supreme Court of the United States held, in *Reitz* v. *Mealey*, 62 S. Ct. 24, 314 U. S. 33, that a statute which authorizes the suspension of a driver's license for non-payment of a judgment is valid. That holding is certainly

consistent with due process of law because a person against whom a judgment has been rendered has been given his day in court and has had an opportunity to be heard on the question of his liability. The Act here involved denies such an inquiry on the question of liability, or right to be heard thereon, either before the Department or in the court on appeal.

It is argued by the Department, and held by the Supreme Court of Texas, that even though the Act does not provide for any character of hearing before the Department, due process is nevertheless afforded in that Section 2(b) provides that any order of the Department may be reviewed by an appeal to the courts. However, if the Act does not permit the granting or withholding of the penalties and suspension by the Department, based upon a determination as to liability or non-liability, can the court on appeal make inquiry into the question of liability and affirm or reverse the administrative order upon the basis of a finding of liability or non-liability? If this Act were susceptible of the construction, and if it were construed by our courts as authorizing the court on appeal from an order of the Department to reverse such order upon inquiry and a finding that the aggrieved party is not liable, then there might be some semblance of due process.

The Department makes its own independent determination as to the amount of security which must be deposited, and the motorist may not be heard thereon. Is he accorded due process merely because he may obtain a review of the Department's order by an appeal to the courts? Section 2(b) of Article II of the Act provides for an appeal to the courts and a de novo trial as to the propriety of the order. But what happens to the citizen, his privilege of driving and the right to sell or hypothecate his automobile pending final judgment of the court? Section 2(b) of Article II further provides: "*The court shall determine whether the filing of the appeal shall operate as a stay of any such order*

or decision of the Department." The decision of the court whether or not to stay the suspension order of the Department is apparently within his unbridled discretion. He may stay or not the enforcement of the suspension order, pending final judgment, according to his whim or fancy. No standard or criterion is laid down to control the trial judge in granting or withholding a stay. What is the plight of the unfortunate citizen appealing to the court to vacate or modify an order of the Department applying the penalties of the Act against him, if the trial court, according to his whim, prejudice, or fancy refuses to stay the enforcement pending final judgment? No appeal could be prosecuted from a refusal to stay the enforcement of the order because such refusal would clearly be interlocutory and non-appealable. He must wait six months, or a year, or maybe longer until his case can reach final judgment. In the meantime he may not drive his automobile nor any other automobile; he may not use it (even with a competent driver at the wheel) nor sell nor borrow money on it, and, if his livelihood depends upon the use of an automobile, disaster and financial ruin may result to him before his case may be tried. On the other hand, one of the more fortunate citizens upon whom the trial court may bestow his favor, by staying the order of the Department, may continue to drive and use his automobile, and until his case may become moot under the Act under the provisions of Subsection 1, Section 7, of Article III. The fact that the trial court, being an officer and agency of the state, may discriminate between citizens by his granting or withholding of a stay order, renders the Act invalid as being in contravention to the Fourteenth Amendment to the Federal Constitution, and would deny the equal protection of the law. It was held by the Supreme Court of Texas in *Stockwell* v. *State*, 221 S. W. 932, that the guaranties of due process require that administrative proceedings affecting property rights shall be subject to a review in the courts and to a judicial determina-

tion made on notice and a hearing. In other words administrative action which is made final, and not subject to judicial review, denies due process. It was further held by the U. S. Supreme Court in *Porter* v. *Investors Syndicate,* 52 S. Ct. 617, 286 U. S. 461, that a statute which, as ancillary to review of administrative action, gives complainant a stay until final decision, affords due process. If a stay is not automatic nor guaranteed, but within the unbridled discretion of the court, to grant or withhold as he sees fit, there is a denial of due process. Statutes purporting to deprive one of the right to a hearing before final disposition of his essential rights are invalid as in contravention of the due process clause; every man is entitled to his day in court before his rights can be finally disposed of, and he cannot be divested of this right by any act of the legislature. *Wilson* v. *Standefer,* 22 S. Ct. 384, 184 U. S. 415; *Olschewske* v. *Priester,* 276 S. W. 647.

The fallacy of the reasoning upon which financial responsibility statutes have been held constitutional by the appellate courts of other states, which statutes provide for suspension without regard to liability, is clearly demonstrated, we think, from the wording of the opinion in *Rosenblum, et al.* v. *Griffin, Commissioner of Motor Vehicles,* 89 N. H. 314, 197 Atl. 701, 115 A. L. R. 1367, by the Supreme Court of New Hampshire, relied upon by the Department in its brief herein, as follows:

> "From a practical standpoint, if there is fault for an accident, it is reasonable that suspension should follow and immediately. But provisional finding of fault is indecisive and much less is a charge or claim of fault. Unless in a case where the doctrine of res ipsa Loquitur might be invoked, an accident of itself is no evidence of liability for it, and a charge of liability has no tendency to prove it. *The determination of a contested claim of fault is usually after a substantial length of time subsequent to the accident. The development of the legislation in meeting the problem of prospective liability,*

either probable or possible, for an accident, has led to the final policy of ignoring it as a test of suspension."

Is it sufficient reason to justify a disregard for the requirement of due process that the determination of the question of liability of a motorist for damages *"is usually after a substantial length of time subsequent to the accident?"* Can a legislature pass a valid law under the police power, which will provide for the taking of property, and deny any inquiry into the liability for damages of the citizen whose property is taken from him, and justify a denial of hearing and inquiry before condemnation by simply *"ignoring it* (liability) *as a test of suspension"?*

Second Assignment of Error

(*Restated*)

The Supreme Court of Texas erred in sustaining the validity of the order of the Respondent issued against Petitioner, D. C. Gillaspie, in that Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as applied to the Petitioner, D. C. Gillaspie, and deprives him of his property and the equal protection of the law in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that, under the undisputed findings of fact of the trial court and under the established law of Texas, the Petitioner, D. C. Gillaspie, is not and cannot be held liable in damages to any person as a result of the collision involved but nevertheless, and in spite of his non-liability to any person in damages, he is deprived of his property under the terms of the law in question.

Statement and Argument under the Second Assignment of Error

The trial court having found as facts (R. 12-13) that Petitioner D. C. Gillaspie's automobile was being driven by

his minor son at the time of the accident, for his own personal pleasure and benefit, and not acting as agent or for the benefit of Petitioner, and such findings of fact being without dispute in the record, D. C. Gillaspie could not be held liable in damages to any person for any negligence of his son. The so-called "Family Purpose Doctrine" holds that the head of a family is liable in damages for the negligent acts of members of his family while operating the family automobile, but such doctrine of liability is not now and has never been the law in Texas. *Bluth* v. *Neeson,* 94 S. W. (2) 407; *Ener* v. *Gandy,* 158 S. W. (2) 989; *Trice* v. *Bridgewater,* 81 S. W. (2) 63; *Seinsheimer* v. *Burkhart,* 122 S. W. (2) 1063; *Sturtevant* v. *Pagel,* 130 S. W. (2) 1017.

It follows that to enforce the Act against D. C. Gillaspie, he not being liable in damages to any person, would be unreasonable and oppressive, and would violate the Fifth and Fourteenth Amendments to the Federal Constitution.

Third Assignment of Error

(Restated)

The Supreme Court of Texas erred in sustaining the validity of the orders of the Respondent issued against Petitioners in that Section 5(b) of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as to both Petitioners, and deprives them of their privileges and property and of the equal protection of the law, in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said section 5(b) permits the Respondent Department of Public Safety to suspend the drivers licenses and motor vehicle registrations of Petitioners unless they deposit the amount of security as is fixed by the Department, and yet no standards or criteria are set forth to govern said Department in arriving at the amount of security to be required of Petitioners.

Statement and Argument under Third Assignment of Error

The Act sets forth no standards by which the Department is to be guided in arriving at the amount of security to be deposited. The only standard is that it shall be an amount which is "sufficient" in the judgment of the Department to satisfy any judgments for damages which may be recovered.

It is well established constitutional law that the Legislature may delegate to an administrative authority the right to make findings of fact upon which the enforcement of the law shall be based, but that the delegation of the administration of a law to an administrative authority, without setting forth standards and criteria to govern such board in enforcing the law and in making findings, constitutes a delegation of legislative power and violates Article III, Section 1, of the Constitution of Texas. *Trapp* v. *Shell Oil Co.*, 198 S. W. (2) 424; *Clark* v. *Briscoe Irr. Co.*, 200 S. W. (2) 674.

Here the Department has been delegated the power to determine the amount of security to be deposited to prevent a suspension and the application of the penalties provided by the Act. In order that this delegation of legislative authority shall not contravene our constitution the Act must furnish sufficient standards and criteria for the guidance and control of the Department in making such findings, in order that the Department may not discriminate between persons similarly situated and thus deny the equal protection of the law. If this act lays down no standard or guide but attempts to vest the determination of the amount of security according to the uncontrolled discretion and judgment of the Department it must be held invalid. We say that there are no standards or criteria provided by the Act, but that the Department may run rampant in the wide latitudes of an unbridled discretion. Is the standard or guide, "the amount of security which shall be sufficient in its judgment to satisfy any judgment", any standard at all? It

clearly is not. To illustrate the point, no definite and fixed amounts are provided as the amount of damages for personal injuries as in the Workmen's Compensation Law, where the compensation or damage is definitely fixed. The Department is left to conjecture that the loss of a finger resulting from an automobile accident would result in a judgment for $5 or $5,000. Today, in one case the Department might fix the amount of damage for the loss of a finger at $5. Tomorrow, in another case, it might fix the amount at $5,000. What is the criterion laid down to control the Department in determining what damages might be recovered if death resulted to a two year old child, with no earning capacity, and yet to be reared and educated? It may well be that the Department, by some proper investigation might determine the amount of property damage which could be recovered in a judgment, because the rules of law for the determination of property damage are well established. Damages for personal injuries, and injuries resulting in death, are however not subject to the same definite ascertainment as property damage. The Act contemplates that the Department shall consider damages resulting from personal injuries, in fixing the amount of security, for in Section 5(a) of Article III it refers to a "written agreement providing for the payment of an agreed amount in installments with respect to all *claims for injuries* or damages resulting from the accident". The very purpose for the requirement that definite standards shall be set forth to guide an administrative authority in the enforcement of a law is that it must be controlled and guided so as to enforce the law equally against all persons coming within its operation, and so as not to deny a person the equal protection of the law. Under this Act the employee of the Department making a determination as to the amount of security may decide that the amount should be $200, and another employee, making such determination in another case, but upon

identical facts and circumstances, could fix the amount at $5,000, but the citizen involved in the latter case could not establish any discrimination against himself because he could not show that any standard or criterion had not been followed.

Concluding Remarks

An article appearing in the November 1953 issue of the Texas Bar Journal, dealing with the act in question, by an eminent Texas lawyer, will serve, in part, to illustrate the character of "fuzzy minded" judicial reasoning which must be resorted to if the act in question is to be upheld as affording due process and equal protection of the law. In one of such articles, T.B.J., p. 692, the following statement is made:

> "Incidentally, the Act has been criticized by some because of its application to a person obviously not at fault. Suppose, for instance, that Mr. Jones has stopped his car and is waiting for a red light, when Mr. Smith hits him from the rear. If Jones has no insurance policy covering the accident, he must apparently deposit security with the Department of Public Safety to the extent of Smith's damage, even though everybody involved knows that he will not be held liable, and Smith is not even making claim against him. *The Department is so construing the Act, and has the support of the case I shall cite.*
>
> It may be that the Department should not require security under such circumstances. The Act says that "the Department shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner." *Perhaps the Department of Public Safety should not require a deposit of security in this situation, but rather, should take the position that in its opinion the amount which shall be necessary to satisfy judgment is none since there is obviously no liability.*"

The plain and unequivocal terms of the act, Section 5(b) of Article III, provides that:

> *"The Department shall . . . suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident . . . unless such operator or owner or both shall deposit security in the sum so determined by the Department;".*

The previous sub-division (a) of said Section 5 provides that:

> *"the Department shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner."*

The plain mandate to the Department is that it *must suspend against every operator and owner of every motor vehicle* involved in *every accident* unless *every owner* and operator shall deposit the security in the amount determined to be sufficient to satisfy all judgments which might result. Clearly, it is not intended by the foregoing language that the Department may determine that there is no liability and thus escape its plain duty to fix ample security to satisfy all judgments, in the event a Court might differ with the conclusions reached by the Department that there is no liability. It is impliedly stated in the article in the Texas Bar Journal, supra, that the Department, in its enforcement of the act, is now construing it to mean that if the Department determines that there is no liability it is not required to fix any amount of security. We have no way of knowing, and this record does not reflect, whether that may be a fact. It is the earnest contention of these Petitioners that the law denies due process because it fails to require a determination of liability as a prior condition to suspension. It would indeed be in-

teresting if counsel for the Department, who are in a position to ascertain the present policy in that regard, would inform this Court as to whether the Department is making determinations of liability and whether it is declining to fix or require any security in those cases in which it determines that there is no liability. If the Department is so doing in some or all cases it is certainly doing so without sanction of this law; and such a policy would clearly constitute an unconstitutional and discriminatory enforcement of the law in favor of those whom the Department determines to be not liable and against those whom the Department decides are liable. The evil which must be constantly avoided in the administration of law by administrative bodies is discrimination in the application of the law based on reasons and motives known to the administrator but unknown to the persons affected.

Apart from all other considerations can any lawyer say that the *use* of an automobile on the public highways is a mere privilege? Obviously, the actual driving or manipulation of an automobile should be considered a privilege only, which could be granted or withheld in any case in the light of the best welfare of the public at large. But an automobile is not, in itself, an unlawful property, such as a drug or gambling device. It is a recognized product of lawful commerce and the subject of ownership; and ownership of property, in the constitutional sense, carries with it the use of the property in legal ways. It may be held that the State may deprive one of his personal right to drive an automobile, arbitrarily and without any semblance of due process, but can it deprive him of the *benefits available from the use of his automobile* in the hands of a competent and licensed driver, except by due course of the law of the land? This law constitutes an insidious encroachment upon the constitutional guarantee of due process. The automobile of the

Petitioner, D. C. Gillaspie, should not be banished from the highways without due process of law.

There can be no finding of fault with a compulsory liability insurance law such as exists in Massachusetts. No automobile can be operated on the highways of that State unless the owner is possessed of such insurance. Under that character of law there can be no discrimination. The law at bar seeks to exempt from its operation certain classes of persons, such as the owners of automobiles legally parked and automobiles involved in collisions when they are being driven without the consent of the owner. It is clearly reasonable that no penalties should be applied against those classes of owners. D. C. Gillaspie, under the undisputed facts and the established law of Texas, cannot be liable or responsible to any person in damages for the collision involved. Is it not equally reasonable that he should not be penalized any more than an owner whose automobile has been stolen and is involved in a collision while being driven by the thief? But he is penalized by this law. It is unreasonable and oppressive and should be stricken down.

Respectfully submitted,

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